

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Nor-Am Cold Storage Inc.,

Petitioner-Appellant,

v.

Plymouth County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 09-75-0208
Parcel No. 12-20-326-013**

On October 8, 2010, the above-captioned appeal came on for a telephone hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Nor-Am Cold Storage Inc. (Nor-Am) was represented by Walter Grimms, Senior Tax Manager with SMART Business Advisory and Consulting, LLC, (SMART), Schaumburg, Illinois. The Plymouth County Board of Review designated County Attorney Darin Raymond as its legal representative. County Assessor Bob Heyderhoff represented the Board of Review at hearing. Both parties relied upon the certified record to support their position. The Appeal Board having reviewed the entire record, heard the testimony and being fully advised, finds:

Findings of Fact

Nor-Am is the owner of a commercially classified, cold storage facility located at 1555 21st Street SW, LeMars, Iowa. According to the property-record card the improvements consist of several additions built between 1999 and 2001, having roughly 213,000 square feet of building area. Walter Grimms, who is both an appraiser and a tax representative, allocates the square footage of building areas as follows: 190,344 square feet of freezer space, 2160 square feet of cooler space, 13,548 square

feet of dock area, 4802 square feet of office space, and 2091 square feet of shop area. The site is 11.76 acres.

Nor-Am protested to the Plymouth County Board of Review regarding the 2009 assessment. The January 1, 2009, total assessment of Nor-Am's property was \$10,681,490 allocated as follows: \$318,720 in land value and \$10,362,770 in improvement value. Nor-Am's claim was based on the following grounds: 1) that the assessment is not equitable as compared with the assessments of other like property in the taxing district under Iowa Code section 441.37(1)(a) and; 2) that the property is assessed for more than the value authorized by law under section under section 441.37(1)(b). In its petition, Nor-Am sought relief to a total assessed value of \$9,263,780. In a May 11, 2009, letter from Walter Grimms to the Board of Review, Grimms, on behalf of Nor-Am, amended the requested relief to a total value of \$8,517,800. The Board of Review denied the petition.

In its appeal to this Board, Nor-Am reasserted the same grounds, but asks for a total assessed value of \$8,199,080.

Nor-Am offered the assessment of nearby Clover Leaf Cold Storage (Clover Leaf) located at 1609 18th Street SW, LeMars, Iowa, as evidence of inequity. A two-page, property record print-out from the Plymouth assessor's website of this equity comparable was included in the certified. A full property-record card was also provided to us upon request. According to the property record card Clover Leaf has roughly 103,000 square feet of building area and is situated on 11.52 acres of land. While the site has similar attributes, the building area is less than half the size of the subject property. Plymouth County Assessor, Bob Heyderhoff testified that Clover Leaf Cold Storage had some functional problems, which would have been reflected as obsolescence/depreciation on the assessment. The property-record card reflects 14% functional obsolescence has been applied to the improvements. Additionally, 7.5 acres of the total 11.52-acre site has a total of 80% obsolescence, split evenly between a topography and economic factor.

Nor-Am presented an appraisal submitted by Walter Grimms, its legal representative. Grimms is a certified appraiser, and also a Senior Tax Manager for SMART. Grimms testified he is a disinterested witness due to being salaried, however we note he represents SMART which is compensated based upon tax savings realized for its client. Heyderhoff contends Grimms appraisal and testimony is irrelevant as he has an interest in the tax savings that would result from a lower assessment. We note that while two disinterested witnesses are necessary to shift the burden of proof; it is not required that the property owner, nor its representative be disinterested for evidentiary purposes. See Iowa Code § 441.21(3). In fact, while property owners who represent themselves would have a financial interest in reducing their assessment, they may still demonstrate their property is assessed incorrectly without shifting the burden of proof. *Ross v. Bd. of Review of the City of Iowa City*, 417 N.W.2d 462, 465 (Iowa 1988) (finding that “failing to shift the burden of proof is not equivalent to failing to satisfy the burden of proof”); *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

Grimms provides five properties for market value analysis, of which only one is a similar cold-storage facility. The other four comparables, according to Grimms, are warehouse facilities. Grimms adjusts the properties in his appraisal report, however he uses a format for comparison that is unusual and difficult to understand. Grimms lumps several factors into a single adjustment. These factors are age, percentage of office space, and cold storage versus warehouse construction. He does not separate out the individual adjustments, and makes a lump sum of +10% for three of the properties, 0% for one, and +20% for the last property. He offers no support for his adjustments other than “reasonableness and common sense.” We find the adjustments are unexplained, unsupported, and illogical. For instance, comparable 2 and comparable 3 have similar years built (1996 and 1994 respectively), a similar percentage of office space (7% and 12% respectively); but comparable 2 is a warehouse versus comparable 3 being a cold-storage facility. Yet both received a similar +10% adjustment compared to

the subject, despite comparable 3 being a cold-storage facility like the subject property. We believe based upon the record and testimony the difference between a warehouse facility and cold-storage facility are significant due to the higher costs associated with necessary insulation for the cold-storage facilities. Because of these unexplained and apparently unreasonable adjustments we find the appraisal is unreliable.

After reviewing all the evidence, we find Nor-Am has failed to present sufficient evidence in support of its claims.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If

sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2).

The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). Nor-Am offered a single property for equity comparison. The Iowa Supreme Court has interpreted "representative number of comparable properties" to be more than one property. *Maxwell v. Shiver*, 257 Iowa 575, 581, 133 N.W.2d 709, 712 (1965). This "statutory requirement is both a jurisdictional prerequisite and an evidentiary requirement for bringing a claim of inequitable or discriminatory assessment before the board." *Montgomery Ward Dev. Corp. by Ad Valorem Tax, Inc. v. Cedar Rapids Bd. of Review*, 488 N.W.2d 436, 441 (Iowa 1992). Furthermore, the word "shall" as used in the statute makes the listing of comparable properties mandatory as failing to do so would "directly frustrate[] the sole function of the requirement, which is to enable the board to make a preliminary determination on the matter of equitability of assessment." *Id.* Nor-Am made no direct comparisons between the subject property and this property submitted for equity analysis. Nor did Nor-Am provide the market value of the equity comparable to complete a ratio analysis of market value to assessment value. Lastly, Nor-Am provided only one property for equity comparison.


In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Nor-Am offered an appraisal completed by its legal representative Walter Grimms of

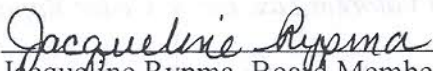
SMART. We find the Grimms appraisal had limited reliability, and therefore we give no weight to this evidence.

The evidence does not support the claims that the property's assessment is not equitable with like properties or that it is assessed for more than the value authorized by law. We, therefore, affirm the assessment of the Nor-Am Cold Storage Inc., property as determined by the Plymouth County Board of Review as of January 1, 2009.

THE APPEAL BOARD ORDERS the assessment of the Nor-Am property located at 1555 21st Street SW, LeMars, Iowa, of \$10,681,490 as of January 1, 2009, set by the Plymouth County Board of Review, is affirmed.

Dated this 28 day of October 2010.


Karen Oberman, Board Chair


Jacqueline Rypma, Board Member

Cc:

Walter W. Grimms
SMART Business Advisory & Consulting
1700 E Golf Road, Suite 1122
Schaumburg, IL 60173
APPELLANT

Darin Raymond
215 4th Avenue, SE
LeMars, IA 51031
ATTORNEY FOR APPELLEE

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>10-30</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	